

KATHERINE C. (ZIMIN) ATKINS

IBLA 85-447

Decided February 24, 1987

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting Native allotment application A-059281.

Set aside and referred to the Hearings Division.

1. Alaska: Native Allotments -- Alaska Native Claims Settlement Act:  
Relinquishment -- Alaska National Interest Lands Conservation Act:  
Valid Existing Rights

Under the Alaska National Interest Lands Conservation Act, Native allotment applications pending before the Department on or before Dec. 18, 1971, were approved, subject to valid existing rights and certain exceptions. Approval does not apply where an allotment has been knowingly and voluntarily relinquished. An evidentiary hearing will be ordered where conflicting allegations give rise to an issue as to whether a relinquishment was knowing and voluntary.

APPEARANCES: Colleen DuFour, Esq., Anchorage, Alaska, for appellant; James Vollintine, Esq., Anchorage, Alaska, for Bristol Bay Housing Authority; Bruce E. Schultheis, Esq., U.S. Department of the Interior, Office of the Regional Solicitor, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Katherine C. (Zimin) Atkins has appealed from a decision, dated February 4, 1985, by the Alaska State Office, Bureau of Land Management (BLM), rejecting her Native allotment application A-059281.

Application A-059281 was filed on December 23, 1964, for 2.23 acres of partially surveyed land in sec. 11, T. 17 S., R. 47 W., Seward Meridian, South Naknek, Alaska. The applicant, appellant herein, alleged use and occupancy since 1949. The land sought by appellant was within a townsite application filed by the South Naknek Village Council on July 30, 1958. Appellant was one of 10 residents of the village who filed individual homesite or Native allotment applications for lands embraced by the townsite application.

In the summer of 1967, the land in the townsite was surveyed and the lands used by appellant were identified on the ground. As a result of U.S. Survey No. 4879 (accepted August 31, 1972), the land applied for by appellant was identified as lot 2, block 16, and lot 8, block 17. On November 1, 1967, the Bristol Bay Resource Area Manager, BLM, wrote appellant asking her to relinquish her Native allotment claim so that BLM could "proceed as fast as possible with the processing of the survey and the passing of title to the lands you are claiming as part of the townsite." On November 9, 1967, appellant filed a form relinquishment and a letter which in its entirety states as follows:

Dear Sir:

I have signed the enclosed Entry Number relinquishment form in good faith, trusting it will not in any way hamper my claim for the described land or portion of same at South Naknek.

I would also appreciate knowing if I am eligible [sic] for same, as my family and I moved out here in August of 1964 so my three children could attend high school. There not being any such facilities at South Naknek at that time.

Also I would like to note, the house my late husband and I lived in on the property, was supposedly given to us as a wedding present. After my husband passed away, I was told by my mother-in-law that the house belonged to my father-in-law. As a result, I had all my personal belongings sold at our best interest and moved away completely. Although before being told this, I had planned on going back each summer for fishing.

Later I heard my father-in-law changed the locks on the house and all in all I do regard it as his house, being I am a Christian and try to live accordingly.

At any rate, my children and I do own the quonset hut on the property, as my late husband bought and erected it himself, and I pay taxes on same each year. And I hope we are able to claim the portion of land surrounding and under the Quonset hut, if we are eligible. I wish to pass on some inheritance from their father however small it is.

Hoping to hear from you soon regarding this matter.

The file reflects no further communications between appellant and BLM for the next several years.

In 1973, the townsite trustee applied for patent. However, at the time this appeal was filed, no patent had been issued, and the trustee had issued no deeds to individual lots.

In 1979, Bristol Bay Housing Authority (BBHA) built a house on lot 2, block 16. On February 16, 1983, BBHA entered into a written agreement with South Naknek Village Council and the Alaska Peninsula Corporation in which the parties agreed that if either the village council or the corporation obtained title to certain lands, including lot 2, block 16, it would promptly convey title to BBHA.

On December 5, 1983, the Bureau of Indian Affairs (BIA) filed with BLM a December 1, 1983, memorandum requesting reinstatement of appellant's Native allotment application. The memorandum stated the purpose of the request was to ensure that appellant would lose no land by selecting the option of receiving land under the townsite laws. Attached to the memorandum was a copy of an affidavit dated November 18, 1983, in which appellant stated:

1. I am requesting reinstatement of my Native Allotment application because at the time that I signed the relinquishment I did not understand that I was giving up my claim to my land in South Naknek.
2. At the time that I signed the relinquishment I was told that I should give up my claim if I did not plan to live on the land anymore.
3. I filed originally for the land with the intention that it would be for my children as part of their heritage.
4. As the records state, there was originally one house and the quonset on my land. The little house with the large addition was separated by Nick Zimin, my father-in-law. The large part was given to my son Ronald E. Zimin and the small part to my other son Ralph E. Zimin. Ronald also has the quonset hut and an HUD house on this land.
5. In 1967, I wrote a letter to the Bureau of Land Management explaining that although I signed the relinquishment, I trusted that it would not in any way hamper my claim for the described land or portion of same at South Naknek for my children.
6. In that letter I also explained that my late husband, Lloyd Zimin, and I built and erected the quonset hut on the land I applied for and paid taxes on it every year.
7. As I recall, after I wrote this letter to BLM in 1967, I did not hear anything more so didn't know if my claim was still valid or not.
8. It was never fully explained to me what the effect would be of my signing the relinquishment form, as concerning the legal effect it would have on my children and their right to receive this land as part of their heritage.

By memorandum of February 8, 1984, the Chief, Native Allotment Section, BLM, advised the Realty Officer, Anchorage Agency, BIA, that appellant's Native allotment application would be reinstated:

A review of Katherine C. Zimin's file shows her relinquishment was in response to a BLM request which implied she would receive title to her land under the Townsite Act if she would relinquish her Native allotment (to date the townsite has not been patented). Her relinquishment was not sanctioned by BIA. Therefore, we will reinstate the Native allotment application for Katherine C. Zimin A-059281. [1/]

On November 9, 1984, BBHA filed a protest against reinstatement of appellant's Native allotment application A-059281 "insofar as it conflicts with Lot 2, Block 16, U.S. Survey 4879." BBHA pointed out that Anecia Elbie (also a Native) was residing in the house on lot 2, and contended that reinstatement would work a serious injustice on BBHA and Anecia Elbie. BBHA contended, inter alia, that BLM had no authority to reinstate the application and that, in any event, appellant had knowingly and voluntarily relinquished the allotment application.

Appellant answered the protest, and on February 4, 1985, BLM issued the decision here under appeal. It recites, in pertinent part:

A question has now arisen whether or not Mrs. Zimin Atkins' relinquishment was knowing and voluntary, and whether or not BLM's reinstatement of the claim was proper. BLM records also reflect a Memorandum from the Bureau of Indian Affairs dated December 16, 1984, advising, "We are transmitting to Townsite Trustee Mrs. Zimin's application for a restricted Trustee deed for the land, which is now described as Lot 5, Block 17, Townsite of South Naknek." [2/]

In order to consider the question adequately, an opinion was sought from the Regional Solicitor. On the basis of the above circumstances, the Regional Solicitor conveyed an opinion that the relinquishment was knowing and voluntary. [3/] The townsite application for survey, received by BLM on January 30, 1958, segregated the land. Thereafter entry under the Native Allotment Act of 1906 was not permissible.

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1/ The case file abstracts show the application was reinstated on Jan. 31, 1984, pending verification of the relinquishment.

2/ The application referred to was not filed on behalf of appellant, but on behalf of Mary Klein Zimin, who also relinquished her Native allotment application (AA-6157); appellant states she did file a trustee deed application, but not until Mar. 14, 1985, after BLM's decision. Statement of Reasons at 11, Exh. 20.

3/ The record contains no written opinion from the Regional Solicitor.

In view of the foregoing relinquishment, the townsite segregation of the land, and Mrs. Zimin Atkins' application for a townsite lot, Native allotment application A-059281 must be and is hereby rejected.

The claim will be removed from the records without further action when the decision becomes final.

On appeal, appellant contends that her relinquishment was not knowingly and voluntarily made. She alleges that while BLM was encouraging allotment applicants to relinquish their claims, the townsite trustee represented that applicants would get the same amount of land under the townsite laws. Appellant submits affidavits from other allotment applicants to support this allegation. Citing Peter Andrews, Sr., 77 IBLA 316 (1983), appellant contends that an evidentiary hearing is required to resolve factual questions concerning the relinquishment issue.

BBHA contends that appellant's relinquishment was knowingly and voluntarily made. BBHA points out that appellant's improvements are located only on lot 8, block 17, and that appellant has applied for this land under the townsite laws. BBHA freely concedes that appellant is entitled to this portion of the original allotment claim. In the alternative, BBHA contends that the lands in question were no longer available for the filing of Native allotment applications after the townsite application was filed in 1958, that it has valid existing rights that preclude reinstatement of the allotment application, and that appellant and the Department are estopped (or prevented by laches) from challenging BBHA's interest in lot 2, block 16.

BLM points out that appellant had left the allotment at the time she relinquished it and argues she abandoned the house to her father-in-law. BLM asserts that the relinquishment is clearly voluntary and that no hearing is required.

[1] Section 905(a)(1) of ANILCA, 43 U.S.C. § 1634(a) (1982), approved, subject to valid existing rights and certain exceptions, all Native allotment applications which were pending before the Department of the Interior on or before December 18, 1971. Section 905(a)(6) of ANILCA, 43 U.S.C. § 1634(a)(6) (1982), provides that approval under section 905(a)(1) does not apply where an allotment application has been knowingly and voluntarily relinquished. In this case, although Native allotment application A-059281 was relinquished, appellant now claims that relinquishment was unknowing and involuntary.

In Peter Andrews, Sr., *supra* at 319, we found that conflicting allegations as to whether a relinquishment of unpatented lands was knowing and voluntary gave rise to an issue of material fact and stated: "An evidentiary hearing is properly ordered where there are outstanding issues of material fact not resolved by the record. See 43 CFR 4.415." See also Matilda Titus, 92 IBLA 340 (1986). Based upon the record in this case, we conclude an evidentiary hearing is warranted. We therefore set aside BLM's decision and refer the matter to the Hearings Division pursuant to 43 CFR 4.415. The Administrative Law Judge shall issue a decision on the issue of whether

appellant's relinquishment was knowing and voluntary. See Peter Andrews, Sr. v. BLM, 93 IBLA 355 (1986). In order to finally resolve this matter, the Judge shall also decide all other relevant questions of law and fact raised by the parties. <sup>4/</sup> The decision of the Administrative Law Judge shall, absent a timely appeal to the Board, be final for the Department.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is referred to the Hearings Division for further action consistent herewith.

John H. Kelly  
Administrative Judge

We concur:

Will A. Irwin  
Administrative Judge

James L. Burski  
Administrative Judge

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<sup>4/</sup> On Aug. 26, 1985, BBHA filed three Alaska Townlot Deed Applications and a copy of a May 7, 1985, letter to the townsite trustee. On Sept. 3, 1985, BLM filed a motion objecting to the filing of these documents. In view of our disposition of this case, we make no ruling on BLM's motion.



